

United States Senate
WASHINGTON, DC 20510

June 6, 2019

William Barr
U.S. Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Patrick Shanahan
Acting Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Attorney General Barr and Acting Secretary Shanahan:

We write to urge your engagement in constructive conversations with the State of North Dakota in order to achieve an equitable settlement to North Dakota's Federal Tort Claims Act (FTCA) claim for damages as a result of the United States Army Corps of Engineers' (Corps) negligent or wrongful acts or omissions during the Dakota Access Pipeline (DAPL) protests.

The DAPL is a 1,172 miles-long interstate underground oil pipeline, originating in North Dakota, the second largest oil producing state in the nation, and terminating in Illinois. From its first inception until present day, DAPL was constructed and is operating in full legal compliance.

In June 2014, the project was publically announced and the company began the permitting process which included hundreds of state and local government permits across four states. On January 20, 2016, the North Dakota Public Service Commission approved the route and corridor under its jurisdiction. Within North Dakota, the pipeline crosses the Missouri River at Lake Oahe, a reservoir created by the Corps' Oahe Dam in South Dakota, requiring Section 404 and 408 permits from the Corps which were believed to be granted on July 25, 2016. That process included continuous tribal consultation with the Standing Rock Sioux Tribe starting in September 2014, among other tribes. However, following this process, officials within the Obama Administration halted the release of a real estate document associated with the Section 408 permit, delaying the completion of the project and fueling the protests on Corps property. The document was finally released under the Trump Administration in February 2017.

In April 2016, protesters began assembling on land under the exclusive control of the Corps without the necessary permits under 36 C.F.R. Part 327. Initial press reports indicated the founders of the protests sought a peaceful prayerful event; however, the protest was joined by individuals, including many who traveled from outside of North Dakota, who acted with little regard for public safety or environmental protection.


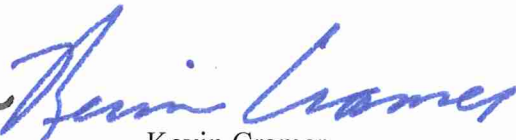

On August 10, 2016, protesters began an over 200-day period of initiating confrontations with law enforcement and other members of the public, including local ranchers and pipeline construction workers. Top estimates of unpermitted encampment populations range from 5,500 to as many 8,000 people on federal land with unsanitary waste systems and unsafe structures.

This number of people would have constituted the 10th largest city in the State of North Dakota. Due to the Corps' failure to fulfill its mandatory legal duty to maintain law and order on federal land, the State of North Dakota had to stretch all law enforcement and emergency response agencies possible to protect public safety and maintain law and order at a cost of \$38 million.

These actions did not happen in a vacuum and they set a dangerous precedent for the future. For example, the long delayed Keystone XL pipeline supported by President Trump has yet to begin construction across multiple states. As a result of the fallout from DAPL, the State of South Dakota enacted laws in attempt to prevent a protest of similar magnitude. That action has so far precluded delays from similar protests against pipeline projects important to this nation.

As you know, the Federal Tort Claims Act was designed to provide maximum opportunity for settlement and was amended at the request of the Department of Justice in 1966 in order to do so. This administration has reset the precedent on permitting this type of project, but we urge you to also reset the federal government's precedent in these matters to maintain law and order on federal land and recognize the overwhelming responsibility the state and local authorities in North Dakota employed to maintain public safety. That is why we again urge you to enter into constructive conversations with the State of North Dakota so that an equitable settlement can be reached in regards to North Dakota's Federal Tort Claims Act (FTCA) claim for damages resulting from the DAPL protests. Thank you for your attention to this matter.

Sincerely,

		
John Hoeven United States Senator	Kevin Cramer United States Senator	Kelly Armstrong United States Congressman

Cc: RD James, Assistant Secretary of the Army (Civil Works)
Alex A. Beehler, Assistant Secretary of the Army (Installations, Energy and Environment)
Pat Cipollone, White House Counsel
Doug Burgum, Governor, State of North Dakota
Wayne Stenehjem, Attorney General, State of North Dakota